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HOUSE OF REPRESENTATIVES

REPORT
No. 97-356

RECORD CARRIER COMPETITION ACT OF 1981

DECEMBER 3, 1981.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

[To accompany H.R. 4927]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce to whom was referred the bill (H.R. 4927) to amend the Communications Act of 1934 to eliminate certain provisions relating to consolidations or mergers of telegraph and record carriers and to create a fully competitive marketplace in record carriage, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

Section 1. This Act may be referred to as the "Record Carrier Competition Act of 1981".

COMPETITION AMONG RECORD CARRIERS

SEC. 2. Section 222 of the Communications Act of 1934 is amended to read as follows:

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"COMPETITION AMONG RECORD CARRIERS

"SEC. 222. (a) For purposes of this section:

"(1) The term 'existing international record carrier' means any international record carrier which is eligible, on the date of the enactment of the Record Carrier Competition Act of 1981, to obtain record traffic from a record carrier in the United States for delivery outside the United States.

"(2) The term 'international record carrier' means any United States record carrier which derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the United States.

"(3) The term 'primary existing international record carrier' means any existing international record carrier which is engaged in the direct provision of record communications services between the United States and 4 or more continents.

"(4) The term 'record carrier' means a common carrier engaged in the offering for hire of any record communications service, including service on interstate network facilities between 2 points located in the same State. Such term does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications service.

"(5) The terms 'record communications facility' and 'facility' mean any telecommunications facility or equipment designed or used primarily to provide any record communications service.

"(6) The term 'record communications service' means any telecommunications service which is designed or used primarily to transfer information which originates or terminates in written or graphic form.

"(b)(1) The Commission shall, to the maximum extent feasible, promote the development of fully competitive domestic and international markets in the provision of record communications service, so that the public may obtain record communications service and facilities (including terminal equipment) the variety and price of which are governed by a fully competitive marketplace. The Commission shall reduce the extent to which it regulates record carriers as the development of competition among record carriers replaces the need for regulation to protect the public.

"(2) In furtherance of the purposes of this section, the Commission shall assure that none of ths costs of regulated or unregulated record communications services and facilities (including terminal equipment) are borne by the users of any other record communications services.

"(c)(1)(A) Each record carrier shall make available to any other record carrier, upon reasonable request, full interconnection with any record communications service or record communications facility operated by such record carrier. Such record communications service or facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

"(B)(i) If any record carrier engages both in the offering for hire of domestic record communications services and in the offering for hire of international record communications services, then such record carrier shall be treated as a separate domestic record carrier and a separate international record carrier for purposes of administering the interconnection requirements established in subparagraph (A).

"(ii) In any case in which such separate domestic record carrier furnishes interconnection to such separate international record carrier, any interconnection which such separate domestic record carrier furnishes to other international record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

"(iii) In any case in which such separate international record barrier furnishes interconnection to such separate domestic record carrier, any interconnection which such separate international record carrier furnishes to other domestic record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

"(iv)(I) Subject to the provisions of subclause (II), if a request for interconnection under subparagraph (A) is for the purpose of providing international record communications service, then the agreement entered into under subparagraph (A) shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

"(II) The requirement established in subclause (I) shall not apply in any case in which the customer requesting any record communications service between a point

outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

"(2) If any request made by a record carrier under paragraph (1) will require an agreement under which any record communications service or record communications facility operated by one of the parties to such agreement will be used by any other party to such agreement, then such agreement shall establish a nondiscriminatory formula for the equitable allocation of revenues derived from such use between the parties to such agreement, except that each party to such agreement shall have the right to establish the total price charged by such party to the public for any such service which is originated by such party, consistent with the provisions of section 203. To the extent possible, and consistent with the provisions of paragraph (3)(B)(ii), the Commission shall require that such equitable allocation of revenues be based upon the relative costs of the record communications service or facility employed as a result of such agreement.

"(3)(A) The Commission, as soon as practicable (but not later than 15 days) after the date of the enactment of the Record Carrier Competition Act of 1981, shall convene a meeting between (i) all existing international record carriers; and (ii) any record carriers which the Commission determines would be parties to any agreement under paragraph (1). Such meeting shall be held for the purpose of negotiating the agreement required in paragraph (1). Representatives of the Commission shall attend such meeting for purposes of monitoring such negotiations.

"(B)(i) If—

"(I) any record carriers specified in subparagraph (A)(ii); and

"(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

fail to enter into an agreement before the end of the 45-day period following the beginning of such meeting, then the Commission shall issue an interim or final order which establishes a just, fair, reasonable, and nondiscriminatory agreement which is consistent with the purposes of this section. Subject to the provisions of paragraph (4)(B), any such agreement established by the Commission shall be binding upon such parties.

"(ii) Such interim or final order shall be issued not later than 90 days after the date on which the Commission convenes the meeting under subparagraph (A). If—

"(I) any record carriers specified in subparagraph (A)(ii); and

"(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

reach an agreement which complies with the requirements of this section, and such agreement is entered into before the issuance of such order by the Commission under this subparagraph, then such agreement of the parties shall take effect and the Commission shall not be required to issue any such order.

"(C) Any record carrier which is not subject to the agreement entered into, or established by the Commission, under this paragraph may elect to be subject to the terms of such agreement upon furnishing written notice to the Commission and to all existing parties to such agreement.

"(D)(i) The ageement entered into, or established by the Commission, under this paragraph shall terminate at the end of the 3-year period following the effective date of such agreement, except that the Commission shall have authority to provide that such agreement shall continue in effect if the Commission determines that such continuation is necessary to carry out the purposes of this section.

"(ii) After the expiration of such agreement, in any case in which a record carrier seeking interconnection in accordance with paragraph (1) is unable to enter into an agreement for the provision of such interconnection, the Commission shall have authority to establish an agreement for such interconnection in accordance with the provisions of this section.

"(E) No United States record carrier shall have any authority to enforce any provision contained in an agreement for the provision of record communications service or facilities which is entered into or renewed after the date of the enactment of the Record Carrier Competition Act of 1981, if the Commission determines that such provision impedes the development or operation of competitive record communications service markets.

"(4)(A) The Commission shall have authority to vacate or modify any agreement entered into by any record carriers under this section if the Commission determines that such agreement is not consistent with the purposes of this section. During the 3-year period specified in paragraph (3)(D)(i), the Commission shall vacate or modify any such agreement under this subparagraph if the Commission determines that such agreement discriminates against any carrier.

"(B) In any case in which the Commission issues an interim or final order under paragraph (3)(B), the parties which are specified in subclauses (I) and (II) of para-

graph (3)(B)(ii) and which are subject to such order shall have authority to supersede the application of such order by entering into an agreement which is consistent with the purposes of this section, except that any such agreement shall be subject to the authority of the Commission under subparagraph (A).

"(5) In any case in which a United States record carrier (other than an international record carrier) submits an application to the Commission for authority to provide international record communications service, the Commission shall not have any authority to take any final action with respect to such application until the end of the 120-day period following the date a written agreement is entered into between such record carrier and existing international record carriers under paragraph (3) (or following the effective date of any interim or final order issued by the Commission under paragraph (3)(B) with respect to such carriers). The limitation upon Commission authority established in this paragraph shall expire at the end of the 210-day period following the date of the enactment of the Record Carrier Competition Act of 1981.

"(d) Each record carrier shall be authorized to provide record communications service in the United States domestic market and in the international market. Any such carrier seeking to provide such service, directly or indirectly, shall submit an application to the Commission under section 214. The Commission shall act expeditiously upon any such application.".

COMMISSION OVERSIGHT OF DISTRIBUTION FORMULAS

SEC. 3. (a) Subject to the provisions of subsection (b), the Federal Communications Commission shall exercise its authority under the Communications Act of 1934 to continue its oversight of the establishment of just and reasonable distribution formulas for unrouted outbound telegraph traffic and the allocation of revenues with respect to such traffic, consistent with the purposes of section 222 of the Communications Act of 1934, as amended in section 2.

(b) The provisions of subsection (a) shall cease to have any force or effect at the end of the 1-year period beginning on the date of the enactment of this Act.

EFFECT OF AMENDMENT UPON CERTAIN CONTRACTS

SEC. 4. The amendment made in section 2 shall not affect the validity of the terms of any otherwise lawful contract relating to the distribution of outbound international record traffic between any domestic record carrier and any international record carrier if such contract was entered into before June 23, 1981.

SUMMARY AND PURPOSE OF THE LEGISLATION

H.R. 4927 is designed to address several problems in the provision of record communications services. First, Section 222 of the Communications Act of 1934 is an outdated and outmoded statute. It bars the major domestic record carrier, Western Union, from competing in international record markets. Section 222 artificially divides the record communications market into national and international markets when, in fact, there is little basis for that division in technology or policy. H.R. 4927 is designed to erase this boundary, and permit full and vigorous competition in both the international and domestic record communications markets without the constraints imposed by an artificial division of the market. H.R. 4927 includes a mechanism to guarantee that carriers are able to compete effectively in the marketplace, while protecting consumers by insuring that any monopoly carrier does not abuse its monopoly position.

BACKGROUND AND THE NEED FOR LEGISLATION

SEC. 222 was added to the Communications Act in 1943. It was added basically to sanction the merger between Western Union and the Postal Telegraph Company. Postal was a failing company but was Western Union's only domestic competition. As a result of

the merger, of course, Western Union had a domestic monopoly in the so-called "record" business, which is the non-voice traffic (i.e., telegrams, telex, etc.).

In return for the domestic monopoly, Western Union was required to divest itself of its international operations. The divested company, now called Western Union International, is a subsidiary of Xerox. Additionally, Western Union was prohibited from engaging in international operations.

Since 1943, and especially in the last five years, the world of telecommunications has drastically changed. Alternatives to Western Union's domestic record services are now being offered by a host of new carriers, and the stage has been set for even more entry by competitors into Western Union's heretofore monopoly domestic markets. In other words, Western Union is losing its monopoly, and is no longer the dominant force that it once was in the telecommunications industry.

On December 12, 1979, the FCC took far-reaching steps promoting domestic competition. The Commission permitted the International Record Carriers (IRCs) to expand their operations from five U.S. gateway cities to 26. This move to expand the gateway cities has already taken substantial business from Western Union. Additionally, the IRCs, of which there are five (RCA, Globecom, Western Union International, IT&T, TRT, and FTCC), have petitioned the FCC to permit them to operate domestically, in direct competition with Western Union.

Thus, there is a changing environment in record communications, yet this is proceeding without any Congressional guidance whatsoever. Further, since the restrictions on Western Union's ability to operate internationally are statutory, the FCC's ability to increase competition is limited without statutory changes in the Act.

Even if the Commission permits the IRCs to compete against Western Union domestically, however, there remain several significant problems. Paramount among these is the problem confronting anyone attempting to establish a new domestic network. Unless a competitor can sell access to the existing customer base of telex/TWX subscribers, it is nearly impossible to sell "the first" subscriber. ITT has experienced this in its efforts to establish a new network domestically. In the year that this network has been in existence, approximately 65 customers have contracted for service.

The FCC has expanded the number of gateways in which the IRCs can pick up and deliver international traffic. In addition, several small competitive carriers have been established. A detailed analysis of the status of competition in the domestic and international record carriage markets may be found in the Appendix to this Report.

SUMMARY OF H.R. 4927

The approach in the reported bill is predicated on several assumptions. First, that competition—in both the domestic and international markets—will better serve the needs of users of record services. Second, that universal access to teletypewriter networks will increase both the level of competition as well as the utilization of record services. Finally, that once a competitive marketplace in

record services has developed, carriers should be subjected to a minimum level of regulation, since market forces would then be in existence to protect the public.

In order to accomplish these goals, a fairly complicated mechanism is required to offset the various incentives in existence which frustrate universal access. For example, the IRCs would like very much to prevent Western Union from entering their market. Western Union would like to enter the international markets, while preserving its dominant position in the domestic market. The Committee tried to construct a series of counter-incentives to bring both sides to a negotiating table, and accomplish what has generally been agreed would be desirable: increased competition in the record market, both at home and internationally.

This will be accomplished by:

1. Mandating interconnection among carriers.
2. Permitting Western Union to enter the international market, but precluding that entry for some time between 120 and 210 days from the date of enactment.
3. Establishing a negotiation session among carriers (under the FCC's aegis) to determine the types, conditions, and charges for interconnections, with a timetable to ensure that these negotiations are completed successfully within 90 days.

These counter-incentives will encourage Western Union to complete interconnection negotiations as soon as possible in order to enter the international market. It will encourage the IRCs to negotiate in good faith, since they know Western Union will enter the international market with 210 days, and their ability to get established in the domestic market will be determined by the agreements that are reached. Finally, in the event that the negotiations are not completed within the required time period, the FCC is given proscriptive authority to impose an agreement (either by an interim or final order) within 90 days of date of enactment.

In effect, the Committee bill would erase the current "international/domestic dichotomy" the current statute imposes. This would, however, create one substantial problem: it would present the foreign PTTs (Postal, Telegraph and Telephone authorities) with the opportunity to influence the development of a competitive marketplace within the U.S. This would be possible because to the extent that the foreign PTTs entered into an agreement with one carrier to guarantee 100 percent of its return international traffic, effective competition within the U.S. would be constrained.

To offset this leverage, the Committee bill will require international entrants into the domestic market to treat their domestic operations as separate corporations for the purposes of the Act. A similar requirement would be made of domestic carriers going overseas. Interconnections between the international and domestic operations of any carrier would be made available to any other international or domestic carrier on the same terms and conditions.

This tracks an equal interconnection proposal advanced by the Department of Justice, and offers a good deal of protection against manipulation of the U.S. domestic market by foreign governments. At the same time, it would not require the creation of all separate subsidiaries for domestic and international operations which most parties agree are not necessary in this case.

The reported bill also contains certain other important provisions:

The bill authorizes domestic operations by the international carriers, while retaining the need for facilities construction permits (Section 214 of the Act) before operations commence. It also preempts state jurisdiction over record services. This jurisdiction is not often used—in fact, New York has recently completed a deregulation proposal that would permit entry into that market simply by notice. With the exception of New York, there is very little intrastate record traffic transmitted—and the type of network utilized by most record carriers would send such traffic across state lines prior to its delivery.

The bill contains an explicit prohibition against cross-subsidies. Currently, the various IRCs are renting terminal equipment for an extremely low price, while they are making up the difference in transmission charges. Independent equipment suppliers cannot hope to meet these prices. Ultimately, a vigorously competitive marketplace will make such a prohibition a moot point, since each segment of the record industry—terminal equipment, domestic record traffic and international record traffic—will have to charge prices reflecting costs. In the interim, however, a statutory prohibition will enhance the development of competition by enabling companies offering some, but not all, of these services and equipment to compete without being victimized by cross-subsidies.

The bill "grandfathers" certain contracts. Several months ago, as part of its effort to expand into the international market, Western Union entered into a contract with TRT/Telco. Under the terms of this agreement, Western Union guaranteed TRT 50 million minutes of international traffic for five years. TRT saw this as a method of insulating itself against the effects of competing in the international marketplace against a company that had a domestic monopoly. Western Union saw it as a mechanism to increase the speed with which it could enter the international marketplace.

The Commission held that the contract was unlawful because it violated the constraints imposed on Western Union by Section 222 of the Act. That decision is currently being appealed. The bill does not take a position on the legality of the contract absent the restrictions in Section 222. It does, however, permit both parties to fulfill their obligations under the contract, if it is found to be legal.

This legislation should not be construed as affecting the Commission's authority under any of the other sections of the Communications Act of 1934, as amended. Rather, it simply removes a statutory barrier to Western Union's return to overseas communications. In other words, the result of repeal of section 222 simply widens the scope of firms eligible to apply for authorization to provide overseas communications services. For this, the amendment of section 222 will not automatically require any restructuring of the international telecommunications industry or any new entry by Western Union into markets presently foreclosed to it. The Committee expects that, as is presently the case, the Commission will continue to employ traditional public interest standards of section 214 in evaluating any applications filed by carriers to provide new services.

COMMITTEE CONSIDERATION

The Subcommittee on Telecommunications, Consumer Protection and Finance held a hearing on H.R. 4801 (a similar bill) on October 23, 1981. The Subcommittee heard testimony from the following witnesses: Mr. David Lubetzky, President and Chief Executive Officer, TRT/Telco; Mr. Eugene F. Murphy, President, RCA Global Communications; Mr. George F. Knapp, Vice President, ITT, and Chairman of the Board, ITT World Communications; Mr. Robert E. Conn, Executive Vice President, Western Union, International; Mr. Roger Newell, General Counsel, FTCC; Mr. Richard C. Hostetler, Executive Vice President, Western Union; Mr. Robert M. Flanagan, Chairman of the Board, Western Union; Mr. Stanford B. Weinstein, Counsel for Regulatory Affairs, Graphnet; Mr. Richard Brandt, Chairman of the Board, Trans-Lux Corporation; and Mr. Phillip C. Onstad, Special Assistant to the Vice President, General Counsel and Secretary, Control Data Corporation.

On October 30, the Subcommittee met in open markup and by recorded vote of 16–0 ordered H.R. 4801 to be reported to the full Committee on Energy and Commerce as a clean bill.

The full Committee on Energy and Commerce met in an open mark-up session on November 12, and by voice vote, a quorum being present, ordered H.R. 4927 reported to the House of Representatives with an amendment.

OVERSIGHT FINDINGS

Pursuant to Clause (2)(1)(3)(a) of Rule XI of the Rules of the House of Representatives, the Committee has made general oversight findings and recommendations set forth in this report.

Pursuant to Clause (21)(3)(b) of Rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Goverment Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause (2)(4)(1) of Rule XI of the Rules of the House of Representatives, the Committee make the following statement with regard to the inflationary impact of the reported bill.

The Committee believes that the enactment of this legislation will have no inflationary impact on prices and costs of operation of the national economy. In fact, the Committee believes that the increased competition resulting from this legislation should help to fight inflation.

COST ESTIMATE

In compliance with Clause 7(a) of Rule XII of the Rules of the House of Representatives, the following statement is made regarding the cost of this legislation.

The reported bill does not authorize any appropriation in order to implement the Act. The Committee estimates that the Federal Communications Commission's appropriation will be sufficient to enable the Commission to carry out the statutory responsibilities imposed by the Act.

In accordance with Clause 2(1)(3)(c) of Rule XI of the Rules of the House of Representatives, the Committee includes the following cost estimate submitted by the Congressional Budget Office relative to the provisions of H.R. 4927:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 20, 1981.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4927, the Record Carrier Compensation Act of 1981, as ordered reported by the House Committee on Energy and Commerce, November 12, 1981.

H.R. 4927 would amend Section 222 of the Communications Act of 1934 by making a number of changes affecting the operations of international and domestic record carriers, including mandating interconnection among carriers. The Federal Communications Commission (FCC) would be required to monitor a negotiation session among carriers to determine appropriate rates and charges for these interconnections. In the event that negotiations are not finalized within the time specified by the bill, the FCC would be authorized to impose an agreement. It is expected that the cost to the FCC for this purpose would not exceed $75,000.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

SECTION-BY-SECTION ANALYSIS OF H.R. 4927

SHORT TITLE

Section 1 states that this bill is titled the "Record Carrier Competition Act of 1981."

COMPETITION AMONG RECORD CARRIERS

Section 2 repeals the existing Section 222 of the Communications Act of 1934 and substitutes a new Section 222. The new Section 222 articulates the goals established by the Congress by its enactment of H.R. 4927. In particular, the Committee has instructed the Federal Communications Commission to promote the development of fully competitive domestic and international markets in the provision of record communication services. Further, the Commission is instructed to reduce regulation or forebear from regulating to the extent that market forces are sufficient to protect the public interest in obtaining record communication services.

In addition, the bill places a statutory prohibition on cross-subsidies between and among the various segments of record communication service. For example, cross subsidies between transmission charges and terminal equipment charges are prohibited.

The definitions are drafted to restrict the applicability of the legislation to what is commonly referred to as record communications services. These services are commonly provided by telegraph companies, and include telegraph, telex, and TWX service. The Committee does not intend that the provision of high speed data communications service be in any way affected by the passage of this legislation. Neither does the Committee intend to include services offered by such companies as the American Telephone and Telegraph Company (or any of its affiliates) or the Communications Satellite Corporation.

This section also confers an affirmative obligation upon every record communications carrier to interconnect with any other record communications carrier upon reasonable demand.

One of the Committee's concerns in removing the current dividing line between domestic and international record carriage was that such an erasure would increase the ability of foreign Postal, and Telephone, Telegraph authorities (PTT's) to influence the development of a competitive marketplace in the domestic United States. In order to reduce this leverage, the Committee has required that all carriers providing both international and domestic service treat each operation as separate corporations for the purposes of interconnection under the Act. This will ensure that any other carrier desiring to provide either domestic service or international service may assert its interconnection rights under the Act, and receive treatment that is identical to that which the carrier provides its own affiliated international or domestic operations, as the case may be. The Committee felt that a full separation requirement for international and domestic service was not required in this case, and that an unbundling of domestic and international tariffs would be sufficient to assure that other carriers were interconnected at fair rates, terms, and upon the same conditions.

This provision also helps to guarantee fair standards for interconnection.

Among other matters, the Committee intends that the agreement should provide for the preservation of the IRCs' existing direct access codes. These access codes enable customers using the Western Union telex/TWX system to direct-dial the overseas services of each IRC. Each IRC has invested substantial sums to promote customer use of these access codes. The Commission has recently found that access codes effectively constitute the IRCs' "business addresses,"and the competitive relations among the IRCs are intimately linked with the existing codes.

The Committee is concerned with the apparent unwillingness of foreign PTT administrations to interconnect with new U.S. international record carriers. These arrangements are, however, outside the scope of the jurisdiction of the Congress.

Nevertheless, the Committee has constructed a method by which a U.S. carrier without an operating agreement can interconnect with another U.S. carrier with such an agreement, consistent with international law, treaties, and regulations, and thereby provide outbound international service.

However, international traffic originating in a foreign country destined for a customer in the United States presents different problems. For example, many countries assign U.S. bound traffic among U.S. carriers according to the amount of traffic each U.S.

carrier brings into that particular country. To the extent that such an arrangement benefits the carrier with an interconnection agreement (because of an increase in traffic resulting from the use of its facilites by the interconnecting carrier lacking such an agreement) the Committee believes that this benefit should accrue to the responsible carrier, i.e., the carrier generating the outbound traffic. In other words, if a carrier's level of return traffic is increased due to an increased level of outbound traffic generated by another U.S. international record carrier, then this benefit should be passed along to the carrier that generated the increased level of traffic.

The Committee believes that in these situations, no free market exists, since traffic is assigned by the monopoly PTT. In order to correct this deficiency in a free market, the Committee has included a requirement that where countries assign U.S. bound traffic in this manner, a proportionate share be allocated by the U.S. carrier with the foreign agreement to the carrier responsible for the increased allocation.

The Committee intends that this provision will only affect the distribution of traffic between the point of interconnection with a foreign correspondent and the point of entry into the United States, that is, the purely international segment of these circuits.

Given the divisive history of the industry and the many prior confrontations between the domestic record carrier and the international record carriers, the Committee felt it was necessary to establish a mechanism to provide for joint and through service between and among connecting carriers. Accordingly, the Committee includes a mandate that the carriers connecting in order to provide joint and through service negotiate an arrangement by which the revenues derived from the provision of such service are allocated between and among the carriers. It is not the intention of the Committee that a carrier which is able to set its own rate for that joint and through service deny a connecting carrier its cost of interconnection, and carriage. However, the Committee does recognize that there are certain cost savings which are inherent in carrier-to-carrier interconnections (as opposed to customer-to-customer interconnections), and that some suitable discount for carrier-to-carrier interconnection will become part of the arrangement. This paragraph insures that the terminating carrier will recoup its costs through the allocation of revenues and permits the originating carrier to recover its costs by setting a rate to the public that is sufficient to cover its own costs plus its payment of the terminating carrier's revenue share. Paragraph (c)(2) of the new Section 222 also requires that the rates to the public must be filed in tariffs with the FCC and thus are subject to the full powers of the Commission to reject, suspend and investigate.

In the event that the carriers are unable to negotiate an agreement for the division of revenues within the timetable established by the bill, the FCC is empowered to prescribe a division rate that, to the extent possible, is cost based. The Committee's overriding concern, however, is that such prescription takes place within the timeframe established by the bill.

The timetable established by the bill for arriving at interconnection arrangements is short. The bill provides for a 45 day negotiating session under the aegis of the Commission, followed by a 45 day period during which the Commission may make its own determina-

tion of an appropriate division rate. In the event that the carriers are able to negotiate an agreement sometime between the 46th and 90th day, they will be able to submit such an agreement to the Commission and the Commission will be relieved of its responsibilities to proscribe a division rate.

In addition, the Committee has provided that new carriers who were not parties to the agreement will be able to receive the benefits of the agreement by notifying the Commission and all existing parties to the agreement.

The Committee believes that agreements meeting the requirements of subparagraphs (c)(2) and (3) are necessary only for a transitional period. Accordingly, this paragraph provides a sunset provision, intended to limit the effectiveness of such agreements, whether arrived at through negotiations or pursuant to Commission orders, to a 3-year period. While paragraph 3(D) does give the Commission the power to extend such agreement if it finds, after full, trial-type hearings on the record, that such action is essential for the effectuation of a competitive marketplace. In any such proceeding, the burden of proof will be on the party that proposes a continuation of such arrangements.

In the event that a new entrant is interested in engaging in record communications competition following that 3-year period, the Commission retains its prescriptive powers and can order an interconnection and division rate upon request of the interconnecting carrier.

Subsection (e) of Section 2 prohibits any U.S. record carrier from enforcing any provision contained in an agreement for the provision of record communication service if the Commission determines that such provision impedes the development or operation of competitive record communications service markets. The intention of the Committee is that this prohibition extend only to interconnection agreements with foreign PTTs. As explained elsewhere, the Committee has created a mechanism whereby a new entrant may invoke its interconnection rights under this bill and establish a circuit (bearer or otherwise) to a foreign country by means of another carrier's facilities. The Committee is particularly concerned that the carrier providing the facilities or capacity under such an arrangement not be impeded from doing so by means of a term in an agreement with a PTT. The Committee's concern in this regard would be particularly great if these agreements were to prohibit the use of bearer circuits or other technological devices which enable competing carriers to enter the market without affecting the operational practices of the interconnecting PTT. The intention of the Committee is not that U.S. carriers deceive foreign PTTs, but rather that the PTTs not be used as an excuse for constraining competition in the international record communications market.

Thus, the FCC could bar the enforcement of an agreement between a United States record carrier and a foreign administration if that agreement restricted the ability of other United States record carriers to send or receive traffic with that administration on a non-discriminatory basis, or limited the ability of other United States record carriers to receive return traffic to the United States from that foreign administration in proportion to the United States originated traffic which those other United States carriers may transmit to that country. This is designed to reduce the ability of

monopoly foreign administrations to impede competition among United States record carriers and to "whipsaw" them. Nothing in this section shall affect any contract described in section 4 of the bill.

The Commission retains its overall authority under the Communications Act of 1934 as amended. In addition, however, the bill provides explicit authority for the Commission to vacate or modify any agreement entered into by any record carriers pursuant to this legislation if the Commission determines that the agreement is not a pro-competitive agreement that would foster the development of a fully competitive marketplace in the provision of record communications services.

In addition, there is a requirement that during the three-year period of the negotiated agreement, the Commission must vacate or modify any agreement if the Commission determines that such an agreement discriminates against any carrier. This provision is designed to prevent physical discrimination. For example, if the points of interconnection specified in the agreement are located in cities where certain carriers do not have facilities, then the Commission would be required to modify that portion of the agreement. If the points of interconnection specified in the agreement were San Francisco and New York, when one of the major carriers currently interconnects in New York and Miami, then such discrimination is contrary to the intention of the Committee and such agreement should be vacated by the Commission accordingly.

This section also includes a 120 day moratorium on the entry of Western Union (the domestic carrier) into the international marketplace. This 120 day moratorium period is triggered by the agreement which is either entered into voluntarily by the various carriers or imposed by the Commission at the end of the 90 day timeframe. It is the Committee's intention that Western Union be permitted to go overseas at the end of this 120 day moratorium period, provided that the interconnection arrangements are being implemented as rapidly as possible. However, in the event that the Commission finds that the interconnection arrangements negotiated or entered into pursuant to the legislation are not, in fact, being implemented, it retains its normal authority to condition facilities construction permits (under Section 214 of the Act) in order to bring all carriers into compliance with the agreement.

Every record carrier is granted overall authority to provide record communications services in U.S. inter- and intrastate markets, and in all international markets. This is clearly a statement of Congressional intent that open entry into all markets be encouraged by the Commission. However, the Commission retains its normal facilities construction authorization authority, in order that the ability of the Commission to regulate these carriers not be undermined. It is clearly the intention of the Committee that all permits requested be promptly granted unless, as noted above, a carrier is not living up to its obligations under the Act.

OVERSIGHT OF DISTRIBUTION FORMULAS

Section 3 retains the current requirement of the Act that the Commission establish outbound distribution formulas for a one year period in order to accomplish an orderly transition.

EFFECT OF AMENDMENT ON CERTAIN CONTRACTS

Section 4 recognizes that in contemplation of the repeal of section 222, Western Union has entered into certain contracts with international record carriers with respect to the distribution of international record traffic originated on the Western Union domestic system. The Committee has no intention to affect the validity of the terms of those otherwise lawful contracts entered into prior to June 23, 1981, or otherwise extinguish the parties' contractual obligations concerning the distribution of outbound international record traffic. Nothing in Section 2 of this bill shall affect their validity. In the event that the agreements are challenged, their legality shall be determined by the courts on well-established issues of contract law, such as the intent of the parties and the nature of the consideration.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic):

SECTION 222 OF THE COMMUNICATIONS ACT OF 1934

[CONSOLIDATIONS AND MERGERS OF TELEGRAPH CARRIERS

[SEC. 222. (a) As used in this section—

[(1) The term "consolidation or merger" includes the legal consolidation or merger of two or more corporations, and the acquisition by a corporation through purchase, lease, or in any other manner, of the whole or any part of the property, securities, facilities, services, or business of any other corporation or corporations, or of the control thereof, in exchange for its own securities, or otherwise.

[(2) The term "domestic telegraph carrier" means any common carrier by wire or radio, the major portion of whose traffic and revenues is derived from domestic telegraph operations; and such term includes a corporation owning or controlling any such common carrier.

[(3) The term "international telegraph carrier" means any common carrier by wire or radio, the major portion of whose traffic and revenues is derived from international telegraph operations; and such term includes a corporation owning or controlling any such common carrier.

[(4) The term "consolidated or merged carrier" means any carrier by wire or radio which acquires or operates the properties and facilities unified and integrated by consolidation or merger.

[(5) The term "domestic telegraph operations" includes acceptance, transmission, reception, and delivery of record communications by wire or radio which either originate or terminate at points within the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, or Newfoundland and terminate or originate at points within the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, or Newfoundland, and includes acceptance, transmission, reception, or delivery performed within the

continental United States between points of origin within and points of exit from, and between points of entry into and points of destination within, the continental United States with respect to record communications by wire or radio which either originate or terminate outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, and also includes the transmission within the continental United States of messages which both originate and terminate outside but transit through the continental United States: *Provided,* That nothing in this section shall prevent international telegraph carriers from accepting and delivering international telegraph messages in the cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States, under regulations prescribed by the Commission, and the incidental transmission or reception of the same over its own or leased lines or circuits within the continental United States.

[(6) The term "international telegraph operations" includes acceptance, transmission, reception, and delivery of record communications by wire or radio which either originate or terminate at points outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, but does not include acceptance, transmission, reception, and delivery performed within the continental United States between points of origin within and points of exit from, and between points of entry into, and points of destination within, the continental United States with respect to such communications, or the transmission within the continental United States of messages which both originate and terminate outside but transmit through the continental United States.

[(7) The terms "domestic telegraph properties" and "domestic telegraph facilities" mean properties and facilities, respectively, used or to be used in domestic telegraph operations.

[(8) The term "employee' or "employees" (i) shall include any individual who is absent from active service because of furlough, illness, or leave of absence, except that there shall be no obligation upon the consolidated or merged carrier to reemploy any employee who is absent of furlough, except in accordance with the terms of his furlough, and (ii) shall not include any employee of any carrier which is a party to a consolidation or merger pursuant to this section to the extent that he is employed in any business which carrier continues to operate independently of the consolidation or merger.

[(9) The term "representative" includes any individual or labor organization.

[(10) The term "Continental United States" means the District of Columbia and the States of the Union.

[(b) (1) It shall be lawful, upon application to any approval by the Commission as hereinafter provided, for any two or more domestic telegraph carriers to effect a consolidation or merger; and for any domestic telegraph carrier, as a part of any such consolidation or merger or thereafter, to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier which is not primarily a telegraph carrier: *Provided,* That, except as provided in paragraph (2) of this subsection, no domestic telegraph carrier shall effect a consolidation or merger with any international telegraph carrier,

and no international telegraph carrier shall effect a consolidation or merger with any domestic telegraph carrier.

[(2) As a part of any such consolidation or merger, or thereafter upon application to and approval by the Commission as hereinafter provided, the consolidated or merged carrier may acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any international telegraph carrier.

[(c) (1) Whenever any consolidation or merger is proposed under subsection (b) of this section, the telegraph carrier or telegraph carriers seeking authority therefor shall submit an application to the Commission, and thereupon the Commission shall order a public hearing to be held with respect to such application and shall give reasonable notice thereof, in writing, and an opportunity to be heard, to the Governor of each of the States in which any of the physical property involved in such proposed consolidation or merger is situated, to the Secretary of State, the Secretary of Defense, the Attorney General of the United States, representatives of employees where represented by bargaining representatives known to the Commission, and to such other persons as the Commission may deem advisable. If, after such public hearing, the Commission finds that the proposed consolidation or merger, or an amended proposal for consolidation or merger, (1) is authorized by subsection (a) of this section, (2) conforms to all other applicable provisions of this section, (3) is in the public interest, the Commission shall enter an order approving and authorizing such consolidation or merger, and thereupon any law or laws making consolidations and mergers unlawful shall not apply to the proposed consolidation or merger. In finding whether any proposed consolidation or merger is in the public interest, the Commission shall give due consideration, among other things, to the financial soundness of the carrier resulting from such consolidation or merger.

[(2) Any proposed consolidation or merger of domestic telegraph carriers shall provide for the divestment of the international telegraph operations theretofore carried on by any party to the consolidation or merger, within a reasonable time to be fixed by the Commission, after the consideration for the property to be divested is found by the Commission to be commensurate with its value, and as soon as the legal obligations, if any, of the carrier to be so divested will permit. The Commission shall require at the time of the approval of such consolidation or merger that any such party exercise due diligence in bringing about such divestment as promptly as it reasonably can.

[(d) No proposed consolidation or merger of telegraph carriers pursuant to this section shall be approved by the Commission if, as a result of such consolidation or merger, more than one-fifth of the capital stock of any carrier which is subject to the jurisdiction of the Commission will be owned or controlled, or voted, directly or indirectly, (1) by any alien or the representative of any alien, (2) by any foreign government or the representative thereof, (3) by any corporation organized under the laws of any foreign government, or (4) by any corporation of which any officer or director is an alien, or of which more than one-fifth of the capital stock is owned or controlled, or voted, directly or indirectly, by any alien or the representative of any alien, by any foreign government or the rep-

resentative thereof, or by any corporation organized under the laws of a foreign government.

[(e)(1) In the case of any consolidation or merger of telegraph carriers pursuant to this section, the consolidated or merged carrier shall, except as provided in paragraph (2) of this subsection, distribute among the international telegraph carriers, telegraph traffic by wire or radio destined to points without the continental United States, and divide the charges for such traffic, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve: *Provided, however,* That in case the interested carriers shall fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or merger a formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection.

[(2) In the case of any consolidation or merger pursuant to this section of telegraph carriers which, immediately prior to such consolidation or merger, interchanged traffic with telegraph carriers in a contiguous foreign country, the consolidated or merged carrier shall distribute among such foreign telegraph carriers, telegraph traffic by wire or radio destined to points in such contiguous foreign country and shall divide the charges therefor, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve: *Provided, however,* That in case the interested carriers should fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or merger a formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection. As used in this paragraph, the term "contiguous foreign country" means Canada, Mexico, or Newfoundland.

[(3) whenever, upon a complaint or upon its own initiative, and after a full hearing, the Commission finds that any such distribution of telegraph traffic among telegraph carriers, or any such division of charges for such traffic, which is being made or which is proposed to be made, is or will be unjust, unreasonable, or inequitable, or not in the public interest, the Commission shall by order prescribe the distribution of such telegraph traffic, or the division of charges therefor, which will be just, reasonable, equitable, and in the public interest, and will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers.

[(4) For the purposes of this subsection, the international telegraph operations of any domestic telegraph carrier shall be considered to be the operations of an independent international telegraph carrier, and the domestic telegraph operations of any international telegraph carrier shall be considered to be the operations of an independent domestic telegraph carrier.

[(f) (1) Each employee of any carrier which is a party to a consolidation or merger pursuant to this section who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began on or before March 1, 1941, shall be employed by the carrier resulting from such consolidation or merger for a period of not less than four years from the date of the approval of such consolidation or merger, and during such period no such employee shall, without his consent, have his compensation reduced or be assigned to work which is inconsistent with his past training and experience in the telegraph industry.

[(2) If any employee of any carrier which is a party to any such consolidation or merger, who was employed by such carrier immediately preceding the approval of such consolidation or merger, and those period of employment began after March 1, 1941, is discharged as a consequence of such consolidation or merger by the carrier resulting therefrom, within four years from the date of approval of the consolidation or merger, such carrier shall pay such employee at the time he is discharged severance pay in cash equal to the amount of salary or compensation he would have received during the full four-week period immediately preceding such discharge at the rate of compensation or salary payable to him during such period, multiplied by the number of years he has been continuously employed immediately proceding such discharge by one or another of such carriers who were parties to such consolidation or merger, but in no case shall any such employee receive less severance pay than the amount of salary or compensation he would have received at such rate if he were employed during such full four-week period: *Provided, however,* That such severance pay shall not be required to be paid to any employee who is discharged after the expiration of a period, following the date of approval of the consolidation or merger, equal to the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger.

[(3) For a period of four years after the date of approval of any such consolidation or merger, any employee of any carrier which is a party to such consolidation or merger who was such an employee on such date of approval, and who is discharged as as result of such consolidation or merger, shall have a preferential hiring and employment status for any position for which he is qualified by training and experience over any person who has not therfore been an employee of any such carrier.

[(4) If any employee is transferred from one community to another as a result of any such consolidation or merger, the carrier resulting therefrom shall pay, in addition to such employee's regular compensation as an employee of such carrier, the actual traveling expenses of such employee and his family, including the cost of packing, crating, drayage, and transportation of household goods and personal effects.

[(5) In the case of any consolidation or merger pursuant to this section, the consolidated or merger carrier shall accord to every employee of former employee, or representative or beneficiary of any employee or former employee, of any carrier which is a party to such consolidation or merger, the same pension, health, disabil-

ity or death insurance benefits, as were provided for prior to the date of approval of the consolidation or merger, under any agreement or plan of any carrier which is a party to the consolidation or merger which covered the greatest number of the employees affected by the consolidation or merger; except that in any case in which, prior to the date of approval of the consolidation or merger, an individual has exercised his right of retirement, or any right to health, disability, or death insurance benefits has accrued, under any agreement or plan of any carrier which is a party to the consolidation or merger, pension, health, disability, or death insurance benefits, as the case may be, shall be accorded in conformity with the agreement or plan under which such individual exercised such right of retirement or under which such right to benefits accrued. For purposes of determining and according the rights and benefits specified in this paragraph, any period spent in the employ of the carrier of which such individual was an employee at the time of the consolidation or merger shall be considered to have been spent in the employ of the consolidated or merged carrier. The application for approval of any consolidation or merger under this section shall contain a guaranty by the proposed consolidated carrier that there will be no impairment of any of the rights or benefits specified in this paragraph.

[(6) Any employee who, since August 27, 1940, has left a position other than a temporary position, in the employ of any carrier which is a party to any such consolidation or merger, for the purpose of entering the military or naval forces of the United States, shall be considered to have been in the employ of such carrier during the time he is a member of such forces, and, upon making an application for employment, with the consolidated or merged carrier within forty days from the time he is relieved from service in any of such forces under honorable conditions, such former employee shall be employed by the consolidated or merged carrier and entitled to the benefits to which he would have been entitled if he had been employed by one of such carrier during all of such period of service with such forces; except that this paragraph shall not require the consolidated or merged carrier, in the case of any such individual, to pay compensation, or to accord health, disability, or death insurance benefits, for the period during which he was a member of such forces. If any such former employee is disabled and because of such disability is no longer qualified to perform the duties of his former position but otherwise meets the requirements for employment, he shall be given such available employment at an appropriate rate of compensation as he is able to perform and to which his service credit shall entitle him.

[(7) No employee of any carrier which is a party to any such consolidation or merger shall, without his consent, have his compensation reduced, or (except as provided in paragraph (2) and paragraph (8) of this subsection) be discharged or furloughed during the four-year period after the date of approval of such consolidation or merger. No such employee shall, without his consent, have his compensation reduced, or be discharged or furloughed, in contemplation of such consolidation and merger, during the six-month period immediately preceding such approval.

[(8) Nothing contained in this subsection shall be construed to prevent the discharge of any employee for insubordination, incompetency, or any other similar cause.

[(9) All employees of any carrier resulting from any such consolidation or merger, with respect to their hours of employment, shall retain the rights provided by any collective bargaining agreement in force and effect upon the date of approval of such consolidation or merger until such agreement is terminated, executed, or superseded. Notwithstanding any other provison of this Act, any agreement not prohibited by law pertaining to the protection of employees may hereafter be entered into by such consolidated or merged carrier and the duly authorized representative or representatives of its employees selected according to existing law.

[(10) For purposes of enforcing or protection of rights, privileges, and immunities granted or guaranteed under this subsection, the employees of any such consolidated or merged carrier shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by that Act; and the National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act.

[(11) Nothing contained in this subsection shall apply to any employee of any carrier which is a party to any such consolidation or merger whose compensation is at the rate of more than $5,000 per annum.

[(12) Notwithstanding the provisions of paragraphs (1) and (7), the protection afforded therein for the period of four years from the date of approval of the consolidation or merger shall not, in the case of any particular employee, continue for a longer period, following such date of approval, than the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger. As used in paragraphs (1), (2), and (7), the term "compensation" shall not include compensation attributable to overtime not guaranteed by collective bargaining agreements.

[(g)(1) The authority of any carrier to provide any service or operate any facilities which it is authorized to provide or operate on the date of enactment of this subsection shall not be altered solely by the inclusion of Hawaii within the definition of 'Continental United States', nor shall such inclusion restrict or impair any carrier's eligibility after the date of enactment of this subsection for new or additional authority.

[(2) Whenever, upon a complaint or upon its own initiative, and after opportunity for a hearing, the Commission finds that any charge, classification, regulation, or practice relating to intercarrier arrangements of any carier serving Hawaii is or will be unjust, unreasonable, discriminatory, or not in the public interest, the Commission shall determine and prescribe what charge, classification, regulation, or practice, or such other remedy as is or will be just, reasonable, nondiscriminatory and in the public interest to be thereafter followed.]

COMPETITION AMONG RECORD CARRIERS

SEC. 222. (a) For purposes of this section:

(1) The term "existing international record carrier" means any international record carrier which is eligible, on the date of the enactment of the Record Carrier Competition Act of 1981, to obtain record traffic from a record carrier in the United States for delivery outside the United States.

(2) The term "international record carrier" means any United States record carrier which derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the United States.

(3) The term "primary existing international record carrier" means any existing international record carrier which is engaged in the direct provision of record communications services between the United States and 4 or more continents.

(4) The term "record carrier" means a common carrier engaged in the offering for hire of any record communications service, including service on interstate network facilities between 2 points located in the same State. Such term does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications service.

(5) The terms "record communications facility" and "facility" means any telecommunications facility or equipment designed or used primarily to provide any record communications service.

(6) "The term "record communications service" means any telecommunications service which is designed or used primarily to transfer information which originates or terminates in written or graphic form.

(b)(1) The Commission shall, to the maximum extent feasible, promote the development of fully competitive domestic and international markets in the provision of record communications service, so that the public may obtain record communications service and facilities (including terminal equipment) the variety and price of which are governed by a fully competitive marketplace. The Commission shall reduce the extent to which it regulates record carriers as the development of competition among record carriers replaces the need for regulation to protect the public.

(2) In furtherance of the purposes of this section, the Commission shall assure that none of the costs of regulated or unregulated record communications services and facilities (including terminal equipment) are borne by the users of any other record communications services.

(c)(1)(A) Each record carrier shall make available to any other record carrier, upon reasonable request, full interconnection with any record communications service or record communications facility operated by such record carrier. Such record communications service or facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

(B)(i) If any record carrier engages both in the offering for hire of domestic record communications services and in the offering for hire of international record communications services, then such record carrier shall be treated a separate domestic record carrier and a separate international record carrier for purposes of administering the interconnection requirements established in subparagraph (A).

(ii) In any case in which such separate domestic record carrier furnishes interconnection to such separate international record carrier, any interconnection which such separate domestic record carrier furnishes to other international record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

(iii) In any case in which such separate international record carrier furnishes interconnection to such separate domestic record carrier, any interconnection which such separate international record carrier funishes to other domestic record carriers shall be (I) equal in type and quality; and (II) make available at the same rates and upon the same terms and conditions.

(iv)(I) Subject to the provisions of subclause (II), if a request for interconnection under subparagraph (A) is for the purpose of providing international record communications service, then the agreement entered into under subparagraph (A) shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

(II) The requirement established in subclause (I) shall not apply in any case in which the customer requesting any record communications service between a point outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

(2) If any request made by a record carrier under paragraph (1) will require an agreement under which any record communications service or record communications facility operated by one of the parties to such agreement will be used by any other party to such agreement, then such agreement shall establish a nondiscriminatory formula for the equitable allocation of revenues derived from such use between the parties to such agreement, except that each party to such agreement shall have the right to establish the total price charged by such party to the public for any such service which is originated by such party, consistent with the provisions of section 203. To the extent possible, and consistent with the provisions of paragraph (3)(B)(ii), the Commission shall require that such equitable allocation of revenues be based upon the relative costs of the record communications service or facility employed as a result of such agreement.

(3)(A) The Commission, as soon as practicable (but not later than 15 days) after the date of the enactment of the Record Carrier Competition Act of 1981, shall convene a meeting between (i) all existing international record carriers; and (ii) any record carriers which the Commission determines would be parties to any agreement under paragraph (1). Such meeting shall be held for the purpose of negoti-

ating the agreement required in paragraph (1). Representatives of the Commission shall attend such meeting for purposes of monitoring such negotiations.

(B)(i) If—

(I) any record carriers specified in subparagraph (A)(ii); and

(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

fail to enter into an agreement before the end of the 45-day period following the beginning of such meeting, then the Commission shall issue an interim or final order which establishes a just, fair, reasonable, and nondiscriminatory agreement which is consistent with the purposes of this section. Subject to the provisions of paragraph (4)(B), any such agreement established by the Commission shall be binding upon such parties.

(ii) Such interim or final order shall be issued not later than 90 days after the date on which the Commission convenes the meeting under subparagraph (A). If—

(I) any record carriers specified in subparagraph (A)(ii); and

(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

reach an agreement which complies with the requirements of this section, and such agreement is entered into before the issuance of such order by the Commission under this subparagraph, then such agreement of the parties shall take effect and the Commission shall not be required to issue any such order.

(C) Any record carrier which is not subject to the agreement entered into, or established by the Commission, under this paragraph may elect to be subject to the terms of such agreement upon furnishing written notice to the Commission and to all existing parties to such agreement.

(D)(i) The agreement entered into, or established by the Commission, under this paragraph shall terminate at the end of the 3-year period following the effective date of such agreement, except that the Commission shall have authority to provide that such agreement shall continue in effect if the Commission determines that such continuation is necessary to carry out the purposes of this section.

(ii) After the expiration of such agreement, in any case in which a record carrier seeking interconnection in accordance with paragraph (1) is unable to enter into an agreement for the provision of such interconnection, the Commission shall have authority to establish an agreement for such interconnection in accordance with the provisions of this section.

(E) No United States record carrier shall have any authority to enforce any provision contained in an agreement for the provision of record communications service or facilities which is entered into or renewed after the date of the enactment of the Record Carrier Competition Act of 1981, if the Commission determines that such provision impedes the development or operation of competitive record communications service markets.

(4)(A) The Commission shall have authority to vacate or modify any agreement entered into by any record carriers under this section if the Commission determines that such agreement is not consistent

with the purposes of this section. During the 3-year period specified in paragraph (3)(D)(i), the Commission shall vacate or modify any such agreement under this subparagraph if the Commission determines that such agreement discriminates against any carrier.

(B) In any case in which the Commission issues an interim or final order under paragraph (3)(B), the parties which are specified in subclauses (I) and (II) of paragraph (3)(B)(ii) and which are subject to such order shall have authority to supersede the application of such order by entering into an agreement which is consistent with the purposes of this section, except that any such agreement shall be subject to the authority of the Commission under subparagraph (A).

(5) In any case in which a United States record carrier (other than an international record carrier) submits an application to the Commission for authority to provide international record communications service, the Commission shall not have any authority to take any final action with respect to such application until the end of the 120-day period following the date a written agreement is entered into between such record carrier and existing international record carriers under paragraph (3) (or following the effective date of any interim or final order issued by the Commission under paragraph (3)(B) with respect to such carriers). The limitation upon Commission authority established in this paragraph shall expire at the end of the 210-day period following the date of the enactment of the Record Carrier Competition Act of 1981.

(d) Each record carrier shall be authorized to provide record communications service in the United States domestic market and in the international market. Any such carrier seeking to provide such service, directly or indirectly, shall submit an application to the Commission under section 214. The Commission shall act expeditiously upon any such application.

APPENDIX*

A Report by the Majority Staff of the Subcommittee on Telecommunications, Consumer Protection, and Finance of the Committee on Energy and Commerce, U.S. House of Representatives, November 3, 1981

1. Regulatory History

One historical boundary divides voice and non-voice or "record" services. This decision stems from telecommunications' technological development and its application to overseas communications. As early as 1842, Morse demonstrated the feasibility of submarine telegraph cable, and in 1858, the first transatlantic telegraph cable was completed and the first message transmitted. By the end of the nineteenth century, reliable telegraph service linked the United States and Europe, with costs falling as low as $.12 per word.

Radio transmission did not develop until the early 1900s. Commercial transatlantic radiotelegraph service commenced in 1920, and transoceanic service began on a commercial basis about a decade later. However, it was not possible to achieve voice communication of quality and reliability comparable to that existing today until the laying of the first transatlantic cable (TAT-1) in the mid-1950s. TAT-1 was owned jointly by AT&T, the British Post Office, and the Canadian Overseas Telecommunications Corporation. This consortium inaugurated service on September 25, 1956.

TAT-1 joined radiotelephone, radiotelegraph and telegraph cable as a major mode of international telecommunications transmission. The new technology weakened the division that had existed between voice and non-voice services up to that time. Voice-grade cable circuits of the quality of TAT-1 permitted the derivation of telegraph circuits that were far superior, and provided greater circuit capacity than that of existing telegraph cables. TAT-1 was also superior to radio transmission, particularly from the standpoint of reliability, and as more transoceanic telephone cables became available, the telegraph companies' international record carriers (IRCs), had, by mid-1960's, gradually phased out their cables. And in fact, as a result of the FCC's 1964 TAT-4 Decision, the IRCs were given the opportunity to acquire ownership rights in the new transatlantic cables.[1] This decision also affirmed the historical dichotomy between voice and record services. By that time it was already clear that this dichotomy was no longer based on traditional engineering distinctions between telegraphy and telephony, but

*This Appendix is composed of excerpts from "Telecommunications in Transition: The States of Competition in the Telecommunications Industry".

[1] American Telephone and Telegraph Co., Memorandum Opinion and Order, 37 FCC 1151, 1157 (1964).

rather on competition, market structure, service provision and economics and considerations of the public interest.[2]

The structural restrictions placed on Comsat paralleled those previously imposed on AT&T and Western Union: Under its 1964 TAT-4 Decision, the FCC restricted AT&T to the provision of message telephone service, private line voice and program transmission offerings. Section 222 of the Communications Act, added in 1943, had earlier precluded Western Union from providing record services in international markets. Comsat, a monopoly satellite services supplier, entered into overseas markets with totally modern facilities, a technology subsidized by the United States space program, and when policy toward satellite communications was not yet encumbered by a history of market development or the presence of existing industry interests. These positive structural constraints were imposed to offset the possible effects of market power.

In the case of its TAT-4 Decision, the FCC recognized AT&T's dominant position in domestic and overseas voice communications. AT&T had advantages that only history could duplicate. By excluding Western Union from international record markets, Congress acknowledged the monopolization of domestic links to record services, brought about by the merger of Western Union and Postal Telegraph and Cable Corporation (Postal Telegraph). As a condition for merger, Congress required Western Union to divest its international telegraph operations. This resulted in the creation of Western Union International, Inc. in 1963, now a subsidiary of Xerox, with financial and operational relationships with the Western Union Telegraph Company.

Since the 1960s, the FCC has favored increased competition in both international and domestic telecommunications. For example, in 1972,[4] the Commission initiated an inquiry to permit AT&T to offer Dataphone service, which was then available only in the United States, in the international market. Dataphone permits users to employ message toll telephone service to send data, facsimile, and other record traffic, alternatively with voice messages, with the use of appropriate terminal equipment.

AT&T argued that its Dataphone service was compatible, "except in minor respects, with [existing] overseas equipment."[5] User groups supported relaxation of the distinctions articulated in TAT-4 between voice and record delivery. The FCC agreed that overseas subscribers should have the flexibility to use international switched telephone services for both voice and traffic data. The Commission held that "such a use would be privately beneficial without being publicly detrimental and consistent with our long-held view that the public's use of the public network should be made as flexible as possible."[6]

In the late 1970s, the FCC reexamined the structural restrictions that had evolved during development of international telecommunications: the Commission considered permitting Comsat to provide retail services; it deliberated over whether other entities should

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[2] See Bolter, International Communications Industry Policy 20 (filed in FCC Docket No. 80-632) (1981).

[4] Overseas Dataphone Service, Notice of Inquiry, 36 F.C.C. 2d 605 (1972).

[5] 36 FCC 2d at 607 (1972).

[6] Overseas Dataphone Service, Report and Order, 57 FCC 2d 705, 709 (1976).

furnish international satellite facilities, and examined the possibility of domestic carriers, such as Western Union, entering overseas markets. It also considered whether the IRCs should compete in domestic record and international voice markets. AT&T's proposed entry into international non-voice services also became an issue, as did the permissibility of international resale.

In 1979, the *Gateways* decision[7] permitted expansion of the IRCs direct record service to additional United States cities. However, the Commission required these firms to unbundle their telex rates and to obtain the domestic link of their service from Western Union. The Commission's *Dataphone* order granted AT&T authority to use MTS for Dataphone services between the United States mainland and foreign points, but prohibited AT&T from making expenditures to enhance MTS non-voice capabilities. The *Datel* decision removed a similar restriction on voice traffic over IRC facilities, by allowing voice "as a permissive or secondary use."[8]

Also in 1979, the "Preliminary Audit Docket" considered the legality of IRC rates and the applicability of a bellweather regime[9] of carrier regulation in international record markets. The FCC's initial findings were that the IRCs' past levels of return may have been excessive, and resulted in cross-subsidization between services. Additionally, the Commission decided to consider deregulation as a policy option, since it felt it lacked the resources necessary to carry on traditional rate base/rate of return regulation.[10]

At this time, the Commission held that Western Union's provision of overseas record services would not violate Section 222 of the Communications Act. This holding permitted Western Union to provide its own telex service, which it had already initiated, to Canada and Mexico, rather than only transmitting in conjunction with the record carriers.[11] Next, in Docket No. 21005, the FCC required that the IRCs be allowed to interconnect with domestic telex services and required carriers to unbundle charges for telex machines and access lines.[12]

In 1980, the FCC pursued these competitive policies still further. In Docket No. 80-632, the Commission considered authorizing both AT&T and the IRCs to provide the full range of record and voice services on a primary, non-ancillary basis. (The *Datel* and *Dataphone* decisions had only allowed AT&T to offer record service and the IRCs voice service, but only on a secondary basis.) The FCC tentatively proposed to remove restrictions on AT&T's provision of record services on a primary basis acknowledging that much of the rationale for the TAT-4 decision had been dissipated by the passage of time.[13]

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[7] International Record Carriers' Scope of Operations (Gateways), FCC Docket No. 19660 (1979).

[8] Western Union International (Datel), Memorandum Opinion, Order and Authorization, 76 F.C.C.2d 166, 179 (1979).

[9] This is a system where the costs and rates of return of one carrier would be studied carefully to provide a benchmark for less detailed review of the others.

[10] "Preliminary Audit and Study of Operations of Int'l Carriers and Their Communications Services", FCC Docket No. 20778 (1979). See Martech Strategies, Inc., "Competition and Deregulation in International Telecommunications", July 10, 1981 (contracted report for National Telecommunications and Information Administration).

[11] See *Western Union Telegraph Co.*, Memorandum Opinion and Order, 75 F.C.C.2d 461 (1979).

[12] See *Customer Use of Telex Service*, Report and Order and Further Notice of Proposed Rulemaking, 76 F.C.C.2d 61 (1979).

[13] "Overseas Communications Service", Notice of Proposed Rulemaking, 84 F.C.C.2d 622, 628 (1980).

In Docket No. 80-176, the Commission considered whether to continue tariff restrictions on resale and shared use of overseas services. Again, the FCC found that removal of regulatory constraints would benefit the public, and that resale and sharing would increase the number of firms in the industry and promote cost-based pricing, providing incentives for development of innovative services.[14]

In the "Authorized User" proceeding, Docket No. 80-170, the FCC considered revising requirements that Comsat act only as a wholesale carrier. The commission's tentative findings indicated that the public would benefit if Comsat could deal directly with users of international services. Additionally, in Docket No. 80-634, the Commission found that Comsat could diversify its lines of business, providing it with even greater operating freedom.

These decisions demonstrate the Commission's attempt to transfer its recent domestic policy orientation toward deregulation and structural reform to overseas markets. In particular, the Commission seems determined to remove traditional dichotomies in the provision of facilities or services, allowing uniform access to international or domestic markets. These decisions promote freedom of entry and provide customers with greater choice or control over the means by which they meet their communication needs.

However, important vestiges of behavioral regulation remain, and there are still formidable barriers to further competition which FCC policy has failed to diminish: foreign entities consistently oppose the Commission's competitive initiatives. Technology is moving toward single circuits that integrate voice and data transmission, and certain large consumers of overses services, such as the Department of Defense, have expressed preferences for sole source supply; and, finally, AT&T's dominance remains an overwhelming reality in the industry.

The FCC does not control international communications industry development, even as it relates to the United States. For example, it was the pressures in international relations that thwarted FCC initiatives in TAT-7's delayed implementation. In another instance, it was the courts that postponed Western Union's entry into overseas markets. Residual elements of the FCC's behavioral regulatory program such as the uniform settlements policy and the international rate of return proceeding (the first since the late 1950's) may not be consistent with deregulation and reliance on competition. Of course, since competition is not yet well developed, despite entry possibilities, and new entrants must deal with foreign entities on bases other than competitive principles, it may be desirable for the FCC to recognize market realities and to temper the thrust of its overall program.

On balance, it appears that the jury is still out on the long term efficacy of the Commission's attempts to create international competition. However, what is apparent is that domestic policies cannot be transferred easily to international markets. And, moreover, policies such as those in Computer II, which created new separations between enhanced and basic services, have not been tested.

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[14] See "International Telecommunications Competition", Notice of Proposed Rulemaking, 77 F.C.C. 2d 831 (1980).

Predictions of the effects of recent FCC actions differ. According to MarTech Strategies, Inc., these

Are mixed, but generally supportive of the view that the degree of government involvement in private market processes may well have been enhanced, both in the near and long term.

The actions will not be deregulatory. Indeed, regulatory need and involvement can be expected to increase for a number of reasons:

1. The agency will continue to cope with an imperfect market situation and with imperfect competition. Conditions for full and fair competition need to be improved;
2. The market restructuring and "contestibility" outcomes will require substantial regulatory involvement;
3. Handling the new basic versus enhanced dichotomy in the international realm will require new and revised policy rules;
4. Maintenance of organization or structural separations will be a large task; and
5. Cross-effects requiring increased coordination with and participation in other regulatory arenas will increase the magnitude of regulatory involvement.[15]

2. Market Participants

The structure of international telecommunications is highly heterogeneous. Overseas facilities are furnished largely by AT&T and Comsat, while AT&T and the international record carriers are the major services providers. Until recently, AT&T and Western Union have had virtually total control of international traffic distribution within the United States. At the foreign end of international circuits, communications is typically controlled by monopoly enterprise, and often governmental administrations, such as West Germany's Bundespost, or centrally controlled private or public corporations which usually provide postal services, telegraph and telephone services (hence the designation "PTT").[16]

AT&T dominates the international market; of all the international carriers, only Bell offers a generalized, multipoint end-to-end service. Section 222 of the Communications Act prohibits Western Union from participating directly in international record markets. The international record carriers have, as yet, domestic service only to a limited number of points, and are expanding only slowly. As a vertically integrated firm, AT&T offers a full range of services through its manufacturing, operating companies, research facilities, domestic (MTS) network, international facilities and overseas affiliations. Finally, in the past as a matter of policy, Comsat has avoided competing with AT&T (and the IRCs). . . .

The ownership of overseas transmission facilities is heavily concentrated. Comsat enjoys a statutory monopoly in the satellite

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[15] MarTech Strategies, Inc., supra, at 16-17.

[16] Resellers, specialized carriers, and information service providers, such as time sharing companies, are attempting to gain a foothold in the overseas industry. If foreign administrations initiated resale subsidiaries, these could deliver to the U.S. and participate in a domestic market, which would imperil the status of these new American entrants. In particular, foreign administrations might limit the access of U.S. firms by giving special treatment to value added carriers resellers and information service providers. American companies could be "caught in the middle," facing dominant carriers in the United States and hostile foreign correspondents abroad.

area, while AT&T and the international record carriers monopolize the ownership and usage of cable facilities (excluding the minor shares of new entrants). While the IRCs have ownership rights in Bell's cable facilities, these remain the prime responsibility of AT&T. Services are jointly provided, often by several U.S. carriers and their foreign correspondents.

The IRCs, AT&T, Comsat and resale carriers operate under license, but three existing value added carriers are unlicensed. Not all carriers serve the same geographic routes, provide all services or employ a full array of facilities and there is, as well, no one service provided by all carriers. Some services can only be obtained from sole-source providers, such as international MTS from AT&T, video offerings from Comsat, and record services from the IRCs. In the case of Dataphone and Datel, consumers themselves can provide the service.

Another difference between voice and record services is the configuration of networks. Western Union's domestic network, unlike AT&T's, is composed of only four major switching centers. Thus, nearly every transmission over this system is interstate; it tends to be distance-insensitive, and also tends to make "universal service" an elusive goal. The domestic record network interconnects with the various international networks at two primary points (New York and San Francisco) and secondarily in Miami. These points of interconnection would tend to freeze the "domestic/international dichotomy" in place even if federal policies were altered in an attempt to integrate these markets. . . .

Chart 6 shows how the distribution of the IRCs' revenues among the major record services has changed over time. Message telegraph, which was the major service in 1965, yielded its "breadwinner status" to telex during the 1965–1979 period. Over the same interval, private line position has remained approximately stable.

Chart 7 compares the operating revenues of Bell and the IRCs. As expected AT&T's total sales dwarf those of its own overseas operations, much less the revenues of all international record carriers combined. Bell's overseas revenues expanded rapidly between 1965 and 1970. In 1965, Bell's voice service approximately equalled sales of the international record carrier industry but, during the 1965–1979 period, international voice services grew much more rapidly than the demand for record carriage and the IRCs' revenues fell in relative terms until, by 1978, they were only about one-half of the magnitude of AT&T's overseas sales.

CHART 6.—OVERSEAS TELEGRAPH CARRIERS REVENUES BY SERVICE: 1965–79 [1]

	Total dollars [2]	Message		Telex		Private line	
		Dollars	Percent of total	Dollars	Percent of total	Dollars	Percent of total
	(A)						
1965	$106.7	$50.6	47.2	$21.3	20.0	$20.2	18.9
1970	193.8	53.1	27.4	63.1	32.6	49.5	25.5
1975	316.1	42.6	13.5	160.4	50.7	69.2	21.9
1976	343.8	38.1	11.1	190.0	55.3	76.3	22.2
1977	396.7	36.4	9.2	227.6	57.4	86.2	21.7
1978	455.1	38.0	8.4	269.7	59.3	95.3	20.9
1979	496.7	37.7	7.6	299.4	60.3	96.0	19.3

CHART 6.—OVERSEAS TELEGRAPH CARRIERS REVENUES BY SERVICE: 1965–79 [1]—Continued

	Total dollars [2]	Message		Telex		Private line	
		Dollars	Percent of total	Dollars	Percent of total	Dollars	Percent of total
1975–79			9.6		57.1		21.1
(B)							
Average annual percent change:							
1965–70	12.68		.97		24.26		19.63
1970–75	10.28		(4.31)		20.51		6.93
1975–79	11.96		(3.01)		16.89		8.53
1965–79	11.61		(2.08)		20.78		11.78

[1] All dollar figures in millions.
[2] Dated revenues were minute (for example, $0.151 million in 1965 and $0.328 million in 1970).

Source: Federal Communications Commission, "Statistics of Communications Common Carriers" and AT&T Annual Reports; See W. G. Bolter, "International Communications Industry Policy," FCC Docket No. 80–632, 1981.

CHART 7.—COMPARISON OF BELL SYSTEM AND OVERSEAS TELEGRAPH CARRIERS; REVENUES: 1965–79

	Bell System		Telegraph carriers revenues (million)	Percentages	
	Total operating revenues (million)	Overseas revenues (million)		(3)/(1)	(3)/(2)
	(1)	(2)	(3)	(4)	(5)
1965	$11,317.9	$94.0	$106.7	0.94	113.51
1970	17,364.6	222.2	193.8	1.12	87.22
1975	29,581.7	505.6	316.1	1.07	62.52
1976	33,506.6	588.2	343.8	1.03	58.45
1977	37,249.5	703.0	396.7	1.06	56.43
1978	41,940.0	849.8	455.1	1.09	53.55
1979	46,415.3	990.6	496.7	1.07	50.14
1975–79				1.06	55.22

Source: Federal Communications Commission, Statistics of Communications Common Carriers and A.T. & T. Annual Reports; See W. G. Bolter, International Communications Industry Policy, FCC Docket No. 80–632, 1981.

CHART 14.—OPERATING REVENUES—INTERNATIONAL RECORD CARRIERS

	Revenues		Market share (percent)	
	1980	1979	1980	1979
FTCC	$6,446,121	$5,435,089	1.2	1.1
ITTWC	182,469,714	169,788,177	34.1	34.2
RCAG	187,511,571	180,843,095	35.1	36.4
TRT	36,242,315	28,381,908	6.8	5.7
United States Liberia	133,174	118,671	0	0
WUI-Caribbean	1,758,099	2,006,338	.3	.4
WUI	120,256,368	110,162,608	22.5	22.2
Total	534,817,362	496,735,886	100.0	100.0

Source: Annual Reports, forms O and R; See Federal Communications Commission, July 7, 1981, letter—61900.

Chart 8 shows recent revenues of the five largest IRCs, both jointly and individually, and compares these with Bell System revenues. This comparison would be of special significance if structural changes, some of which are already under consideration by the

FCC and Congress, bring these firms into direct across-the-board competition. As the chart indicates, revenues of the largest IRC, RCA, represent only about 0.4 percent of those of AT&T, and the results would be similar if comparisons were based on the value of investment or the number of employees.

3. Regulation—Jurisdiction and Type

As we noted, the regulatory requirements of international carriers under Title II of the Communications Act of 1934 are similar to those of domestic common carriers. But a major distinguishing feature of overseas communications is the presence of foreign correspondents and the "mixing together" of this country's telecommunications, trade and other objectives and regulations with those of foreign nations. Within this framework, domestic communications goals cannot and do not predominate. When conflicts with foreign policy arise, the most basic attempts to promote traditional public interest objectives may fall by the wayside. In particular, priorities of American trade, defense, and diplomatic policy often take precedence over provision of "efficient service at minimum cost."

CHART 8.—COMPARISON OF BELL SYSTEM AND OVERSEAS TELEGRAPH CARRIERS; REVENUES: 1979–80

	Operating revenues[1]							Percentages					
	Bell System	Five[2] IRC's	RCA	ITT	WUI	TRT	FTCC	(2)/(1)	(3)/(1)	(4)/(1)	(5)/(1)	(6)/(1)	(7)/(1)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
(A):													
1979	$46,415.3	$494.6	$180.8	$169.8	$110.2	$28.4	$5.4	1.066	0.390	0.366	0.237	0.061	0.012
1980	50,791.2	533.0	187.5	182.5	120.3	36.2	6.5	1.049	.369	.359	2.37	.071	.013
(B):													
Percent change, 1979–80	9.4	7.8	3.7	7.5	9.2	27.4	20.4						

[1] All revenue figures in millions.
[2] Excludes U.S. Liberia Radio Corporation and Western Union International Caribbean, Inc. These carriers' 1979 revenues were $2.1 million or approximately 0.42 percent of those of all overseas carriers.
Source: Federal Communications Commission, Form 903 and Statistics of Communications Common Carriers, and AT&T Annual Reports; See W. G. Bolter, International Communications Industry Policy, FCC Docket No. 80–632, 1981.

Governmental intervention in overseas communications first emerged during the late nineteenth century when various countries began to allocate landing rights for submarine cables. Until World War I, facilities ownership was largely British, but the war changed the ownership of facilities, or qualified the rights of their operators. Indeed, the formation of RCA in 1919 was a result of United States control of radio stations during the war by the U.S. Navy, and its encouragement of domestic ownership.

Institutionalized regulation of overseas communications began in the 1920's. In 1921, the Cable Landing Act gave the President authority to control cable landing licenses. In 1927, Congress formed the Federal Radio Commission to supervise the burgeoning communications industry. Congress created the Federal Communications Commission in 1934 to regulate both telegraph and telephone common carrier services. However, it was not until 1954 that the FCC acquired authority to regulate submarine cable operation, subject to the approval of cable landing licenses by the Secretary of State.

International regulation has not fully adopted constraints on the rate base and rate of return familiar in the domestic setting. For example, the FCC has no power to negotiate agreements with foreign correspondents or participate directly in INTELSAT. The Commission has run afoul of foreign interests in the past, when it has attempted to pursue domestic goals without full cooperation of the PTTs.

One notable example was the FCCs pursuit of greater efficiency in the planning of overseas cable investment; this coincided with AT&T's TAT-7 application in the mid-1970s. The Commission attempted to deal with the chronic problem of excess capacity in overseas transmission facilities by delaying TAT-7's installation. Based on its analysis, "the FCC stated its tentative preference for a plan which did not include the new cable during the 1977-1985 period. Following exhaustive analysis of the information submitted in the proceeding, the FCC issued a decision affirming its tentative preference." [20] Despite its recognition of "good intentions," the State Department overruled the FCC findings. The European PTTs' opposition to the FCC's program was the major stumbling block.

FCC regulation of earnings by overseas carriers has generally been lax. In the case of AT&T, it has consistently failed to examine rates, rate of return, and the rate base. Other regulation has been sporadic. The Commission in the ITT rate of return proceeding recently initiated its first investigation of IRCs earnings since 1958, and this proceeding may fail for lack of both resources and continued Commission interest.

The FCC conducted a general investigation of Comsat's operations during the 1970s, issuing a decision in 1975. At the direction of Congress, the FCC has also recently conducted a study of possible changes in Comsat's corporate structure (Docket No. 80-634). The FCC has also ordered Comsat to reduce its rates. Negotiations over facility authorizations between the FCC and other overseas carriers have been a primary means for achieving regulatory goals.

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[20] See Stanley, supra, at 396. See also Overseas Communications, FCC Docket No. 77-536 (Aug. 1, 1977), and Overseas Communications, Report, Order and Third Statement of Policy and Guidelines, 67 F.C.C. 2d 358 (1977).

Foreign correspondents, particularly European PTTs, believe that the Commission needs to pay more attention to the effects of its actions on foreign administrations. Many Commission actions have been viewed as a threat to international comity or to the sovereignty of the PTTs. Not suprisingly, these entities have opposed many of the Commission's recent initiatives to make international communications more competitive.

Foreign correspondents often view the United States political process with alarm and frustration. The openness of our proceedings, the involvement of many governmental and judicial entities, the lack of overall coordination, and an emphasis on market processes are not viewed with great sympathy. And since PTTs do not consider FCC decisions to be the "final word," they are generally unwilling to be subject to these decisions, even when sustained by an American court.

PTTs prefer "benevolent monopolies" rather than a multitude of smaller firms. Such entities speak with authority, in contrast to many American institutions. In the field of telecommunications decision making, PTTs have found:

> [a] Congress that is attempting to pass legislation and an FCC that is issuing decisions affecting international communications, courts that are reversing the FCC and involved in substantive matters, and an NTIA that is analyzing the decisions made by the FCC and appears in many areas to take . . . positions [contrary] to the FCC, and a State Department that does not perceive telecommunications as a high priority.[21]

Technology aside, fundamental political differences between overseas and domestic communications remain. That is, political factors place constraints on traffic bound for international points that are simply not relevant to domestic counterparts. Trade, defense, and foreign policy aspects of dealing in international markets inevitably affect policy in this area. For instance, foreign opposition to international resale can nullify Commission initiatives this is because of the need of new entrants for operating agreements and the considerable adverse influence and adjustments that other overseas carriers can make to oppose resale. Likewise, the Commission's requirements for a uniform settlements policy to prevent carrier "whipsawing" has no direct parallel in domestic markets and acts as a barrier to entry.

The necessity for PTTs to act as a partner in the international facilities also provides these entities with a power that has no domestic parallel. The cost and availability of services and the facilities themselves must depend on the vested interests of PTTs, which may not be predicated on the idea of efficiently satisfying communications users at the least possible price. Portions of the spectrum available for certain services, facilities and service standards, and related engineering, may differ considerably because of the influence of foreign correspondents. The NTIA report by MarTech Strategies states:

> The PTTs clearly perceive the FCC's December 1979 and April and October 1980 international communications deci-

[21] See MarTech Strategies, Inc., supra, volume 2, appendix C, at 10-11.

> sions as adversely affecting their interest. . . . The PTTs overwhelmingly prefer the status quoo to the changes proposed by the Commission. In essence, they perceive the proposed changes as challenging their monopoly position and control over telecommunications usage and pricing of services. European PTTs appear relatively satisfied with the existing international telecommunications industry structure consisting of several established U.S. International Record Carriers and one predominant U.S. voice carrier. The PTTs also claimed that the decisions would not substantially result in improved services to their customers.
>
> The intense oposition on the part of foreign PTTs to the FCC's restructuring proposals established a formidable barrier to entry, if not a block, in the near term.[22]

As noted, PTTs prefer to deal with sole source suppliers and those carriers with which they have established relationships. Since PTTs usually act for all subscribers within a country these policies contribute to the concentration of monopoly power. The PTTS also possess considerable political power. Although PTTs can use U.S. interconnection policies to their advantage, they can refuse to interconnect in their country as a weapon to thwart competition. For example, American law requires telex interconnection, but permits foreign correspondents, if it suits their purposes, to deal with only a single international record carrier.

4. Level of Competition and Trends

Competition in international telecommunications varies widely depending on the services, facilities, routes, or operating relationships with foreign correspondents involved. As shown by Chart 9, AT&T's absolute size dwarfs all other carriers, even when we consider only its overseas operations. On the basis of revenues, AT&T's 1980 overseas market share was over 70 percent. Of course, the overall market considered includes record services—an area in which Bell does not compete. Chart 7 shows that AT&T's revenues are about twice those of all international record carriers combined.

Chart 10 shows comparisons of the IRCs combined communications plant and work force versus those of the total Bell System. The IRCs plant is only about 6 percent of that of the Bell System while its employees total about 65 percent of Bell's work force. Every year Bell System construction expenditures exceed the cost of the total plant of all IRCs multiplied twenty times. Bell's leading position in terms of industry share has been increasing since the 1960s. Chart 11 shows that in 1965 total IRC revenues were about 1.13 times those of AT&T's overseas operations, but by 1979 these were only one-half of Bell's sales. Overseas telegraph carriers' sales represent only about 1.0 percent of AT&T's total operating revenues. This ratio has fallen slightly between 1965 and 1979. Although these comparisons are staggering when the IRCs revenues are combined, they become even more disproportionate when put in terms of an individual record carrier. . . .

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[22] MarTech Strategies, Inc., supra, Volume 1, at 12.

CHART 7.—COMPARISON OF BELL SYSTEM AND OVERSEAS TELEGRAPH CARRIERS; REVENUES: 1965–79

	Bell System		Telegraph carriers revenues (million)	Percentages	
	Total operating revenues (million)	Overseas revenues (million)		(3)/(1)	(3)/(2)
	(1)	(2)	(3)	(4)	(5)
1965	$11,317.9	$94.0	$106.7	0.94	113.51
1970	17,364.6	222.2	193.8	1.12	87.22
1975	29,581.7	505.6	316.1	1.07	62.52
1976	33,506.6	588.2	343.8	1.03	58.45
1977	37,249.5	703.0	396.7	1.06	56.43
1978	41,940.0	849.8	455.1	1.09	53.55
1979	46,415.3	990.6	496.7	1.07	50.14
1975–79				1.06	55.22

Source: Federal Communications Commission, Statistics of Communications Common Carriers and A. T. & T. Annual Reports; See W. G. Bolter, International Communications Industry Policy, FCC Docket No. 80–632, 1981.

CHART 10.—COMPARISON OF BELL SYSTEM AND OVERSEAS TELEGRAPH CARRIERS: PLANT AND EMPLOYEES: 1965–79

	Bell System			Overseas Telegraph Carriers		Percentages		
	Communications plant (dollars in millions)	Construction expenditures (dollars in millions)	Employees (in thousand)	Communications plant (dollars in millions)	Employees (in thousands)	(4)/(1)	(4)/(2)	(5)/(3)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(A):								
1965	$36,229	3,918	627.3	$189.2	7.6	0.52	4.83	1.21
1970	56,171	7,159	792.8	351.7	7.6	.63	4.91	96
1975	89,194	9,329	788.9	568.0	6.1	.64	6.09	.77
1976	95,798	9,847	777.7	622.4	5.7	.65	6.32	.73
1977	103,576	11,566	785.3	655.5	5.4	.63	5.67	.69
1978	112,992	13,670	822.6	695.6	4.6	.62	5.09	.56
1979	123,867	15,837	858.6	737.1	5.6	.60	4.65	.65
1975–79						.62	5.44	.68
(B) Average annual percent change:								
1965–70	9.17	12.81	4.79	13.20				
1970–75	9.69	5.44	[1] (0.10)	10.06	(4.30)			
1975–79	8.56	14.15	2.14	6.73	(2.12)			
1965–79	9.18	10.49	2.27	10.20	(2.16)			

[1] Numbers in parentheses, ( ), are negative figures.

Source: Federal Communications Commission, "Statistics of Communications Common Carriers", Bell System Statistical Manual, and A.T. & T. Annual Reports; See W. G. Bolter, "International Communications Industry Policy", FCC Docket No. 80–632, 1981.

CHART 12.—INTERNATIONAL PRIVATE LINE-TELEPHONE COMPANIES

	Revenues		Market share (percent)	
	1980	1979	1980	1979
A.T. & T	$7,408,578	$7,587,756	50.1	51.6
Cuban American	60,235	125,709	.4	.9
Hawaiian Telephone	6,383,698	5,783,306	43.2	39.3
All America C. & R	349,467	387,729	2.4	2.6
ITT Virgin Islands	573,443	828,838	3.9	5.6
Total	14,775,421	14,713,338	100.0	100.0

Source: Annual Reports, Forms O, R and M; See Federal Communications Commission, July 7, 1981, letter—61900.

CHART 13.—INTERNATIONAL PRIVATE LINE: TV TRANSMISSION

	Revenues		Market share (percent)	
	1980	1979	1980	1979
A.T. & T	$359,271	$406,999	5.7	7.4
ITTWC	2,543,833	1,503,167	40.1	27.2
RCAG	1,271,798	1,911,048	20.1	34.5
WUI-Carib	104,934	108,133	1.7	2.0
WUI	1,854,511	1,281,756	29.3	23.2
Cuban American	140	4,824	0	0.1
All America C. & R	46,644	12,065	0.7	0.2
Hawaiian Telephone	160,099	308,328	2.5	5.6
Total	6,341,230	5,536,320	100.1	100.2

Note: Market share figures are rounded so total may not equal 100 percent.

Source: Annual Reports, Forms O, R and M; See Federal Communications Commission, July 7, 1981, letter—61900.

5. Barriers to Further Competition

The FCC's program for stimulating competition in overseas communications markets has not had the impact of its domestic efforts. The FCC has also been unable to introduce engineering and economic efficiency criteria as the central objectives, of the industry's facility planning or resource (spectrum) distribution processes. The industry's structure and the relationships that exist between the various entities involved have impeded such a rationalization.

Chart 14 shows a further division of the international record industry. In this market, RCAG, ITTWC, and WUI are the leading carriers. However, none of these firms had a share that approaches that of AT&T in telephone services. In terms of individual services, Chart 6 indicates the emergence of telex as the leading record service. Since 1965, telex revenues, as a percentage of all overseas telegraph carriers' revenues, has grown from 20.0% to 60.3%. Over the same period, message revenues have fallen from 47% to 7.65% of the total. . . .

CHART 14.—OPERATING REVENUES—INTERNATIONAL RECORD CARRIERS

	Revenues		Market share (percent)	
	1980	1979	1980	1979
FTCC	$6,446,121	$5,435,089	1.2	1.1
ITTWC	182,469,714	169,788,177	34.1	34.2
RCAG	187,511,571	180,843,095	35.1	36.4
TRT	36,242,315	28,381,908	6.8	5.7
U.S. Liberia	133,174	118,671	0	0
WUI-Carib	1,758,099	2,006,338	0.3	0.4
WUI	120,256,368	110,162,608	22.5	22.2
Total	534,817,362	496,735,886	100.0	100.0

Source: Annual Reports, Forms O and R; See Federal Communications Commission, July 7, 1981, letter—61900.

There are many other major barriers to further competition: (1) foreign correspondents resist entry and interconnection with new suppliers; (2) some major customers, such as U.S. defense agencies, prefer sole source supply; (3) AT&T dominates voice markets and is able to reach end users without interconnection difficulties; (4) communications and information systems technology, are converging, putting a possible premium on larger scale integrated operations; (5) legal barriers prevent the entry of Western Union into international competition; (6) the FCC has only limited authority to implement its deregulatory agenda or to provide assurances of fair competition; (7) there are economic risks of entry which cannot be planned for, including the level of domestic interconnection charges or overseas services competitive rate reductions; (8) the Commission's uniform settlements process is incongruous with other policies and inconsistent with competition; and (9) there are many barriers for the new entrant including spectrum limitations and coordinated frequency management activities with overseas correspondents, conflicting U.S. governmental goals, foreign statutory monopolies, and ability of large integrated carriers to plan their facilities and operations to further their services and corporate strengths.

Among these, the opposition of foreign correspondents to competition is a crucial barrier and the one which is least likely to be overcome. Foreign correspondents do not favor increased competition and have the power to erect formidable obstacles to new entry relating to interconnection, frequency management and other technical standards. They can also circumvent FCC initiatives through foreign policy channels available to them. On the basis of these problems alone, the prospects for achieving international long distance competition present markedly different problems from those present in domestic markets.

But domestic legislative and regulatory action can remedy several institutional barriers to entry that past policies imposed. Reform can undo dichotomies in facilities and services, and the burdens of behavioral regulation. In fact, legislation now pending in the Congress will remove the artificial restrictions on Western Union imposed by section 222 of the Communications Act. . . .

Many barriers for existing potential and competitors relate to and reinforce each other. Full competition is not possible in the present marketplace without the cooperation, and acquiescence, of A.T. & T. and foreign correspondents (*e.g.,* in interconnection), and

they simply have too many opportunities to erect the barriers we have described. The future holds new problems: the dominant powers can employ new tariffs, institute new types of pricing (such as volume sensitive pricing), and slow down the availability or maintenance of facilities in order to exclude new competitors. In this environment, there may be need for more, not less, oversight of the marketplace.

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